

§ 354.6

same proceeding or in another proceeding, except as authorized by the Tariff Act of 1930 or by an administrative protective order.

(8) Use of business proprietary information submitted for a countervailing duty investigation or administrative review during an antidumping duty investigation or administrative review, or vice versa.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24404, May 4, 1998]

§ 354.6 Initiation of proceedings.

(a) *In general.* After an investigation and report by the director under § 354.5(c) and consultation with the Chief Counsel, the Deputy Under Secretary for International Trade will determine whether there is reasonable cause to believe that a person has violated an administrative protective order. If the Deputy Under Secretary for International Trade determines that there is reasonable cause, the Deputy Under Secretary for International Trade also will determine whether sanctions under paragraph (b) or a warning under paragraph (c) is appropriate for the violation.

(b) *Sanctions.* In determining under paragraph (a) of this section whether sanctions are appropriate, and, if so, what sanctions to impose, the Deputy Under Secretary for International Trade will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. If the Deputy Under Secretary for International Trade determines that sanctions are appropriate, the Deputy Under Secretary for International Trade will initiate a proceeding under this part by issuing a charging letter under § 354.7. The Deputy Under Secretary for International Trade will determine whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(c) *Warning.* If the Deputy Under Secretary for International Trade determines under paragraph (a) of this section that a warning is appropriate, the Deputy Under Secretary will issue a warning letter to the person believed to have violated an administrative protective order. Sanctions are not appropriate and a warning is appropriate if:

(1) The person took due care;

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(2) The Secretary has not previously charged the person with violating an administrative protective order;

(3) The violation did not result in any disclosure of the business proprietary information or the Secretary is otherwise able to determine that the violation caused no harm to the submitter of the information; and

(4) The person cooperated fully in the investigation.

[63 FR 24404, May 4, 1998]

§ 354.7 Charging letter.

(a) *Contents of Letter.* The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that a administrative protective order has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before a presiding official if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and amending the charging letter.* The Deputy Under Secretary for International Trade and a charged or affected party may settle a charge brought under this part by mutual agreement at any time after service of the charging letter; approval of the presiding official or the administrative protective order Sanctions

Board is not necessary. The charged or affected party may request a hearing but at the same time request that a presiding official not be appointed pending settlement discussions. Settlement agreements may include sanctions for purposes of § 354.18. The Deputy Under Secretary for International Trade may amend, supplement, or withdraw the charging letter as follows:

(1) If there has been no request for a hearing, or if supporting information has not been submitted under § 354.13, the withdrawal will not preclude future actions on the same alleged violation.

(2) If a hearing has been requested but no presiding official has been appointed, withdrawal of the charging letter will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(3) The Deputy Under Secretary for International Trade may amend, supplement or withdraw the charging letter at any time after the appointment of a presiding official, if the presiding official determines that the interests of justice would thereby be served. If the presiding official so determines, the presiding official will also determine whether the withdrawal will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the

method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that satisfies the due process requirements under United States law with respect to notice in administrative proceedings.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 354.8 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 354.7 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department or others, including the protection of business proprietary information, the Deputy Under Secretary may petition a presiding official to impose such sanctions.

(b) The presiding official may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of an administrative protective order and the Department is likely to prevail in obtaining sanctions under this part,

(2) The Department or others are likely to suffer irreparable harm if the interim sanctions are not imposed, and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department or others, including, but not limited to:

(1) Denying a person further access to business proprietary information.

(2) Barring a person from representing another person before the International Trade Administration.